

**203 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.22578 of 2019

Reserved on 12.09.2023

Date of Pronouncement: 22.09.2023

Shivraj Singh

..... Petitioner

Versus

**Financial Commissioner (Appeals), Punjab,
Chandigarh and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Maninderjit Singh, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. Amit Dhawan, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing order dated 20.05.2019 (Annexure P-3) passed by respondent No.1 and for upholding well reasoned order dated 18.04.2013 (Annexure P-1) passed by respondent No.3 and order dated 26.07.2016 (Annexure P-2) passed by respondent No.2. Further prayer has been made for staying the operation of impugned order dated 20.05.2019 (Annexure P-3) till the pendency of the writ petition.

Brief facts of the case are that on the death of Lambardar, namely, Ajit Singh, son of Karam Singh, the post of Lambardar in village Awankha Tehsil and District Gurdaspur fell vacant. For filling up the post,

process for appointment of new Lambardar was initiated by the District Collector vide order dated 16.05.2012. Resultantly, the Assistant Collector Grade Second, Dinanagar got the mustri munadi conducted in the village through Patwari Halqa to invite the applications from the eligible candidates. In pursuance to the same, applications from Shivraj Singh, Nirmal Singh, Tarlok Singh, Kuldeep Singh, Balwan Singh and Raj Kumar were received. Character verifications of all the candidates were got conducted and the police verifications were also received. On conducting the necessary inquiry, the Assistant Collector recommended the name of petitioner, namely Shivraj Singh for the appointment of Lambardar of village. On comparison of interse merits of the petitioner and respondent No.4 by the Collector, it was found that respondent No.4-Kuldeep Singh was 59 years of age and studied upto B.A. Part I. Besides this, he owned 05 acres of land and he was a retired ASI from the Punjab Police. So far as the petitioner is concerned, he was found to be 45 years of age and had passed matric. Besides this, he owned 05 kanals of land. The petitioner was also the son of deceased Lambardar. Learned District Collector on the evaluation of merits and demerits of the candidates, appointed the petitioner, namely, Shivraj Singh son of Ajit Singh as the Lambardar of the village vide his order dated 18.04.2013. Aggrieved by the same, respondent No.4 filed an appeal under Section 13 of the Punjab Land Revenue Act 1887 (for short 'the Act') before the Commissioner, Jalandhar Division, Jalandhar. The learned Commissioner, after hearing both the sides, found no merit in the appeal and thus, dismissed the same vide his order dated 26.07.2016 and thus, upheld the order passed by the

District Collector. Aggrieved by the same, respondent No.4 filed the revision petition under Section 16 of the Act before the learned Financial Commissioner, Punjab. The learned Financial Commissioner, heard both the sides and set aside both the orders passed by the District Collector and that by the Commissioner by accepting the revision filed by respondent No.4 vide his order dated 20.05.2019. The learned Financial Commissioner also directed respondent No.4 to be appointed as the Lambardar of the village. Hence, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that on the initiation of process for appointment of Lambardar, the petitioner had duly applied along with the co-applicants. He submits that the petitioner was found to be more suitable candidate among all other candidates and thus, he was appointed by the District Collector to be the Lambardar of village. He submits that name of the petitioner was recommended by the Assistant Collector Grade Second, Dinanagar and Assistant Collector Grade First, Gurdaspur and thus, on the overall evaluation of merits and demerits of the candidates, finding him more suitable, he was appointed as the Lambardar of village. He submits that on the comparison of interse merits of both the petitioner and that of respondent No.4, it is apparent that the petitioner was 45 years of age and had passed matric. Besides this, he owned 5 kanals of land and he was the son of deceased Lambardar as well. On the other hand, respondent No.4 was 59 years of age and had passed B.A. Part I. He was also a retired ASI from the Punjab Police. He submits that the petitioner obviously was much

younger than respondent No.4. Being matric, he was also eligible for the appointment of Lambardar. He submits that the appeal filed by respondent No.4 was also dismissed as the learned Commissioner did not find any infirmity in the order passed by the District Collector. He submits that the learned Financial Commissioner has failed to appreciate the statutory provisions and the law settled and thus, drew the wrong conclusion in setting aside the well reasoned orders passed by the District Collector and learned Commissioner, which are totally against the settled principles of law. He submits that the petitioner being younger in age had a preferential right to be appointed as Lambardar. Learned counsel for the petitioner has relied upon the decision rendered by Hon'ble the Supreme Court in ***Mahavir Singh Vs. Khiali Ram*, 2009(1) RCR(Civil) 757** wherein it has been held that a candidate who is younger in age should have been given the preference. Learned counsel for the petitioner also submits that though the petitioner was son of the deceased Lambardar, however that was not the only ground for his appointment as on other parameters as well, the petitioner was found to be more meritorious. Hence, the findings of learned Financial Commissioner that the hereditary claim had been held to be unconstitutional was no ground to upset the order passed by the Collector. He submits that as per law settled, the Collector is the prime authority in appointing the Lambardar and his findings cannot be interfered in a casual manner except in the situation when the same suffers from patent illegality or perversity. However, as there is no perversity in the order passed by the Collector, the view taken by the learned Financial

Commissioner is totally unsustainable in the eyes of law and thus, the same deserves to be set aside.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He vehemently submits that on the comparison of interse merits, respondent No.4 was more meritorious than the petitioner but this fact was not taken into consideration by the learned District Collector. He submits that respondent No.4 though was elder to the petitioner but he served in the Punjab Police for a considerable long time and retired as ASI. Besides this, he was more qualified than the petitioner as he passed B.A. Part I. He submits that the petitioner was working in Kesar Cinema Hall at Dinanagar and thus, his availability in the village was also not certain whereas respondent No.4 being a retired official from the Punjab Police was always available in the village which the learned Collector and the Commissioner failed to appreciate. He submits that in the facts and circumstances of the case, the orders passed by the Collector and the Commissioner suffer from perversity and hence, the same has been rightly set aside by the learned Financial Commissioner by appointing respondent No.4 to be the Lambardar of the village. He submits that the present petition being devoid of any merit deserves to be dismissed.

I have heard learned counsel for both the parties and perused the material on record.

After hearing learned counsel for both the parties and perusing the material on record, it is apparent that process for appointment of new Lambardar on the death of Lambardar, namely, Ajit Singh, son of

Karam Singh in village Awankha Tehsil and District Gurdaspur was initiated by the District Collector vide order dated 16.05.2012. Both the petitioner and respondent No.4 duly applied for the appointment along with other co-applicants. Thereafter, merits and demerits of the candidates were duly evaluated. Resultantly, the Assistant Collector on the appreciation of the merits of the candidates, recommended the petitioner for appointment of the Lambardar. Learned District Collector appreciated the overall merits of the candidates and accepted the recommendation made, finding the petitioner to be more suitable candidate for the post of Lambardar appointed him as the Lambardar of the village. The appeal filed by respondent No.4 was found to be without any merit by the Commissioner and thus, the same was dismissed vide order dated 26.07.2016. Thereafter, the learned Financial Commissioner in the revision filed by respondent No.4, reversed the decision of both the Collector and the Commissioner. The learned Financial Commissioner has observed that in accordance with Rule 15 of the Punjab Land Revenue Act, respondent No.4 having served in the Punjab Police was more meritorious. He also observed that though as per Rule 15(a), the hereditary claim is one of the considerations but the same would not automatically entitle the candidate to be appointed as Lambardar. He further observed that respondent No.4 was more mature and meritorious and thus, set aside the order passed by the District Collector and the Commissioner.

It is an admitted fact that the petitioner was younger in age than respondent No.4 and he had passed matric class as well. As per the verification of the antecedents, there is nothing on record to show that the

petitioner had any adverse record. There is no gain saying that the Collector is the prime authority for the appointment of the Lambardar, who not only appreciate the record of candidates but also personally interacts with the candidates in the fray. As per the settled proposition of law by the Hon'ble Supreme Court in the judgment titled as ***Mahavir Singh Vs. Khiali Ram***, 2009(1) RCR(Civil) 757, a candidate who is younger in age should have been given the preference.

The appointment made by the District Collector was upheld by the Commissioner in the appeal filed by respondent No.4 wherein the appeal was dismissed vide order dated 26.04.2016. As per the law settled, it is worthwhile to note that though the petitioner was son of the deceased Lambardar, however, that was not the only ground to be taken into consideration by the Collector while appointing him as the Lambardar as the overall merit of the petitioner must be taken into consideration while comparing the interse merits of both the candidates.

This Court in “***Sukhjinder Pal Singh Vs. State of Punjab and others***”, 2016(3)R.C.R.(Civil)725, while dealing with the same question has held as under:-

14. It is pertinent to mention here that the appointment of Lambardar is primarily the prerogative and administrative act of the District Collector. The selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment.”

It is the settled principle of law that the Choice of the Collector should not be normally interfered unless some grave discrepancy is observed in the same.

However, in the considered opinion of this Court, the view taken by learned Financial Commissioner suffers from patent illegality and thus, the impugned order dated 20.05.2019 passed by the learned Financial Commissioner being totally contrary to the facts and circumstances of the case and the law settled and being perverse is hereby set aside. The orders passed by the learned Collector dated 18.04.2013 and the learned Commissioner dated 26.04.2016 are upheld. Resultantly, the present petition stands allowed in the abovesaid terms.

(RAJESH BHARDWAJ)
JUDGE

22.09.2023

rittu

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No